

**UNITED STATES DISTRICT COURT**  
**FOR THE WESTERN DISTRICT OF LOUISIANA**  
**SHREVEPORT DIVISION**

**ANTON COOLEY, SR.**

**CIVIL ACTION NO. 15-1885-P**

**VERSUS**

**JUDGE FOOTE**

**MARY L. HARRIED, ET AL.**

**MAGISTRATE JUDGE HORNSBY**

**REPORT AND RECOMMENDATION**

In accordance with the standing order of this court, this matter was referred to the undersigned Magistrate Judge for review, report and recommendation.

**STATEMENT OF CLAIM**

Before the court is a civil rights complaint filed in forma pauperis by pro se plaintiff Anton Cooley, Sr. ("Plaintiff"), pursuant to 42 U.S.C. § 1983. This complaint was received and filed in this court on June 16, 2015. Plaintiff is incarcerated at the Caddo Correctional Center in Shreveport, Louisiana. He claims his civil rights were violated during his criminal trial proceedings. He names attorneys Mary L. Harried and Alan Golden as defendants.

Plaintiff claims Mary Harried, his appointed attorney, refused to get legal evidence. He also claims he saw Harried give his statements to Detective Demery. He claims he has not met with an investigator in more than a year. He claims Harried has not interviewed any of his witnesses, but that the State has interviewed them. He claims Harried is working for the State more that she is working for him. He claims Harried told him that the amount of blood found in the car is not important. He also claims Harried told him that the fact that

the narrators' stories do not match is not important. He claims Harried has not read the motion for discovery and that the shirt used to wipe the gun was not found. He claims he does not have a relationship with Harried and he wants her removed from his case.

Plaintiff claims Defendants violated the attorney-client privilege. He claims Harried gave privileged information to Detective Demery.

Accordingly, Plaintiff seeks punitive and compensatory damages, costs to retain another attorney, and Defendants reprimanded, removed from his case, and disbarred.

For the following reasons, Plaintiff's civil rights complaint should be dismissed.

### **LAW AND ANALYSIS**

Plaintiff claims his court appointed attorney Mary L. Harried provided him ineffective assistance during his criminal proceedings and violated the attorney-client privilege. Plaintiff does not make specific allegations against Alan Golden. Section 1983 prescribes redress for conduct by any person who, under color of state law, acts to deprive another person of any right, privilege or immunity secured by the Constitution and laws of the United States. 42 U.S.C. § 1983. A plaintiff in a civil rights suit must show that the conduct complained of was committed by a person acting under color of state law. Neither privately obtained nor court appointed defense attorneys act under color of state law for purposes of Section 1983.

Both a retained and a court appointed attorney serve their client, the accused; they do not serve the state. They serve a private function for their client that follows from the very nature of the attorney-client relationship and for which no state office or authority are

needed. Hence, neither a retained nor a court appointed attorney acts under color of state law and cannot be held liable under Section 1983. See Polk County v. Dodson, 454 U.S. 312 (1981); Ellison v. DeLa Rosa, 685 F.2d 959, 960 (5th Cir. 1982) (citing Polk County, supra); United States ex rel. Simmons v. Zibilich, 542 F.2d 259, 261 (5th Cir. 1976); Nelson v. Stratton, 469 F.2d 1155 (5th Cir. 1972); Richardson v. Fleming, 651 F.2d 366 (5th Cir. 1981); Mills v. Criminal District Court #3, 837 F.2d 677 (5th Cir. 1988)(citing Nelson, supra).

Accordingly, Plaintiff's civil rights claims against Mary L. Harried and Alan Golden should be dismissed as frivolous.

### CONCLUSION

Because Plaintiff filed this proceeding in forma pauperis, if this court finds Plaintiff's complaint to be frivolous, it may dismiss the complaint as such at any time, before or after service of process, and before or after answers have been filed. 28 U.S.C. § 1915(e); Green v. McKaskle, 788 F.2d 1116, 1119 (5th Cir. 1986); Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985). District courts are vested with extremely broad discretion in making a determination of whether an in forma pauperis (IFP) proceeding is frivolous and may dismiss a claim as frivolous if the IFP complaint lacks an arguable basis either in law or in fact. Hicks v. Garner, 69 F.3d 22 (5th Cir. 1995); Booker v. Koonce, 2 F.3d 114 (5th Cir. 1993); Neitzke v. Williams, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989).

Accordingly;

**IT IS RECOMMENDED** that Plaintiff's civil rights complaint be **DISMISSED**

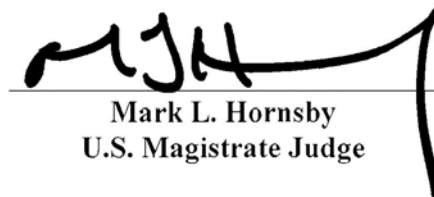
**WITH PREJUDICE** as frivolous under 28 U.S.C. § 1915(e).

**OBJECTIONS**

Under the provisions of 28 U.S.C. 636(b)(1)(C) and Fed. R. Civ. Proc. 72(b), parties aggrieved by this recommendation have fourteen (14) days from service of this report and recommendation to file specific, written objections with the Clerk of Court, unless an extension of time is granted under Fed. R. Civ. Proc. 6(b). A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof. Counsel are directed to furnish a courtesy copy of any objections or responses to the District Judge at the time of filing.

A party's failure to file written objections to the proposed findings, conclusions and recommendation set forth above, within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. See Douglas v. U.S.A.A., 79 F.3d 1415 (5th Cir. 1996) (en banc).

**THUS DONE AND SIGNED**, in chambers, at Shreveport, Louisiana, on this the 23rd day of May, 2016.

  
Mark L. Hornsby  
U.S. Magistrate Judge